

ALJ/GEW/avs

Decision 02-02-036 February 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application for Authority to Transfer
Control of Enhanced Communications Network,
Inc. to Pacific Telecom, Inc.

Application 01-11-020
(Filed November 13, 2001)

O P I N I O N

1. Summary

This application seeks approval under Section 854 of the Public Utilities Code of a transfer of control of Enhanced Communications Network, Inc. (ECN) from its current shareholder to Pacific Telecom, Inc. (PTI) through the sale of ECN's stock. Since ECN will continue to provide service in California as a wholly owned subsidiary of PTI, the applicants do not seek to transfer ECN's operating authority or its utility identification number, U-6162-C. The application is unopposed. The application is granted.

2. Description of Applicants

ECN, a Delaware corporation with offices in West Covina, California, was authorized to provide interexchange telephone service by this Commission in Decision 99-04-018. The company is authorized to provide intrastate telecommunications services in 33 other states, and it is authorized by the Federal Communications Commission to provide domestic interstate and international services as a non-dominant carrier.

PTI was incorporated in Delaware in May 2001 and is involved in investments in the telecommunications industry. It states that it will utilize the

same vendors and consultants that now serve ECN in order to provide service to end users in California.

3. Nature of Application

Pursuant to applicants' stock purchase agreement, attached to the application as Exhibit D, PTI will acquire 100 percent of the issued and outstanding capital stock of ECN, effective upon the required approval of this Commission and other regulatory agencies. Consideration for the transfer of control contemplated in the application is payment by PTI of \$40,500.

After the transfer of ownership and control, ECN will become a wholly owned subsidiary of PTI and will continue to operate as it has in the past, using the same name and operating authority, with no change in the terms and conditions applicable to customers. Applicants state that the transfer of control will be transparent to customers and will have no adverse impact upon them.

Exhibits attached to the application show that PTI has the financial qualifications necessary to continue the operation of ECN. Since ECN will continue to operate with existing management, technical qualifications for the change in control have been met. According to the application, ECN will operate without change, but the transfer of stock will give it more financial resources with which to serve California customers.

4. Public Interest

The application states that the transfer of control will serve the public interest in promoting competition by combining the financial resources of the applicants. The parties state that the transaction will enable ECN to strengthen its competitive position in California, which will inure to the benefit of consumers through improved service.

5. Discussion

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control...any public utility organized and doing business in this state....” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed transfer of control here promises improved services for California consumers. No changes in the existing services of ECN are proposed. PTI has the financial qualifications necessary to support the ECN operation.

There have been no protests to this application, and the contemplated transfer of control appears to be noncontroversial. The application requests expedited approval of the application. However, since PTI is not a public utility, the acquisition approval requires authorization of the full Commission.

In Resolution ALJ 176-3076, dated November 29, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3076.

The application is granted, subject to the terms and conditions set forth below.

Findings of Fact

1. Notice of this application appeared in the Commission’s Daily Calendar of November 20, 2001.

2. Applicants seek approval pursuant to Pub. Util. Code § 854 of a transaction that will transfer control of ECN to PTI through the sale of ECN's stock.

3. ECN is authorized to provide intrastate interexchange services in 33 states, including California. It is authorized to provide domestic interstate and international services as a non-dominant carrier.

4. PTI is a Delaware corporation formed for the purpose, among others, of investment in the telecommunications industry.

5. There will be no change in name, current services or rates provided by ECN as a result of the transfer of control.

Conclusions of Law

1. The proposed transfer of control is not adverse to the public interest.

2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

3. ECN should be permitted to retain its U-6162-C identification.

4. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Enhanced Communications Network, Inc. (ECN) and Pacific Telecom, Inc. (PTI) are authorized pursuant to Section 854 of the Public Utilities Code to enter into the transaction, as more fully described in the application and its exhibits, by which PTI will purchase the stock and acquire control of ECN.

2. ECN and PTI shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the instruments of transfer shall be attached to the notification.

3. ECN and PTI shall make all books and records available for review and inspection upon Commission staff request.

4. ECN shall retain its corporate identification number of U-6162-C.

5. The authority granted herein shall expire if not exercised within one year of the date of this order.

6. Application 01-11-020 is closed.

This order is effective today.

Dated February 21, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners